

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	File No.: EB-08-TC-5801
	)	
USA Teleport, Inc.	)	NAL/Acct. No.: 201032170920
	)	
	)	FRN: 0003775566
	)	

**MEMORANDUM OPINION & ORDER**

**Adopted: April 29, 2011**

**Released: April 29, 2011**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, issued pursuant to section 405 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and section 1.106 of the Commission’s rules,<sup>2</sup> we deny a Petition for Reconsideration filed on March 8, 2011, by USA Teleport, Inc. (“USAT”).<sup>3</sup> The object of the Petition for Reconsideration is a Forfeiture Order imposing a \$20,000 forfeiture for USTA’s willful and repeated failure to file a timely Customer Proprietary Network Information (“CPNI”) compliance certification for the calendar year 2007,<sup>4</sup> in violation of section 64.2009(e) of the

<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106. The Commission recently adopted certain amendments to section 1.106. *See Amendment of Certain of the Comm’n’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Comm’n Org.*, GC Docket No. 10-44, Report and Order, FCC 11-16, 2011 WL 379987, at \*8–10, paras. 26–32 (rel. Feb. 4, 2011). Because those amendments have yet to take effect, however, we rely here on the existing version of section 1.106. *See id.* at \*13, para. 43 (adopting amendments “effective 30 days after publication in the Federal Register”).

<sup>3</sup> Although USAT captioned its pleading as an “Answer to Order of Forfeiture” and submitted it via electronic mail to Division staff (rather than to the Secretary as prescribed by section 1.106(i) of the Commission’s rules), the pleading was filed within the time period permitted for petitions for reconsideration and we therefore treat it as such pursuant to section 405 of the Act and section 1.106.

<sup>4</sup> *USA Teleport, Inc.*, File No. EB-08-TC-5801, Order of Forfeiture, DA 11-424, 2011 WL 742240, at \*1, 4, paras. 1, 11 (Telcomm. Consumers Div. rel. Mar. 3, 2011) (“*Forfeiture Order*”).

Commission's rules;<sup>5</sup> paragraphs 51 and 53 of the Commission's *EPIC CPNI Order*;<sup>6</sup> and, by extension, section 222 of the Act.<sup>7</sup> For the reasons set forth below, the Petition for Reconsideration is denied.

## II. BACKGROUND

2. USAT is a telecommunications carrier, located in North Miami Beach, Florida, that provides interexchange services. As a telecommunications carrier, USAT is subject to the requirements of section 222 of the Act and section 64.2009 of the Commission's rules (as amended by the *EPIC CPNI Order*)—including the requirement that “on or before March 1” annually, USAT file a CPNI compliance certification with the Commission's Enforcement Bureau (“Bureau”) in EB Docket No. 06-36.<sup>8</sup>

3. On September 5, 2008, the Bureau issued a Letter of Inquiry (“LOI”) to USAT asking whether, on or before March 1, 2008, USAT had filed a section 64.2009(e) compliance certification for the calendar year 2007, and if not, why not.<sup>9</sup> USAT responded not by claiming to have filed the certification on time, but by proposing to make a late filing.<sup>10</sup> USAT's late-filed certification, dated September 10 and postmarked September 12, 2008, was eventually received by the Commission on September 19, 2008.

4. On February 24, 2009, the Bureau released an *Omnibus Notice of Apparent Liability for Forfeiture* (“*Omnibus NAL*”) imposing a forfeiture of \$20,000 against numerous carriers, including USAT, for their apparent failure to comply with section 64.2009(e) of the Commission's rules, the Commission's *EPIC CPNI Order*, and section 222 of the Act.<sup>11</sup> The *Omnibus NAL* directed carriers either to pay the proposed forfeiture or file a written response stating why the proposed forfeiture should be canceled or reduced.<sup>12</sup>

5. In response, USAT conceded that it had failed to file a CPNI compliance certification on or before March 1, 2008.<sup>13</sup> USAT raised three arguments, however, for why its failure to make a timely

<sup>5</sup> 47 U.S.C. § 64.2009(e).

<sup>6</sup> *Implementation of the Telecomms. Act of 1996: Telecomms. Carriers' Use of Customer Proprietary Network Info. and Other Customer Info.; IP-Enabled Servs.*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953, 6954, paras. 51, 53 (2007) (“*EPIC CPNI Order*”), petition for review denied sub nom. *Nat'l Cable & Telecomm. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

<sup>7</sup> 47 U.S.C. § 222. The CPNI compliance certification filing requirement imposed by section 64.2009(e) of the Commission's rules and the *EPIC CPNI Order* forms “an important part” of a carrier's general obligations to protect CPNI under section 222 of the Act. *Forfeiture Order*, 2011 WL 742240, at \*2, para. 5.

<sup>8</sup> 47 C.F.R. § 64.2009(e); accord *EPIC CPNI Order*, 22 FCC Rcd at 6953, 6954, paras. 51, 53.

<sup>9</sup> See Letter from Marcy Greene, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Legal Department, USA Teleport, Inc. (Sept. 5, 2008) at 1.

<sup>10</sup> See E-Mail from Noemi Dolinsky, General Manager, USA Teleport, Inc., to Marcy Greene, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Sept. 9, 2008, 19:41 EDT); E-Mail from Noemi Dolinsky, General Manager, USA Teleport, Inc., to Marcy Greene, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Sept. 8, 2008, 11:54 EDT).

<sup>11</sup> *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299, 2299, para. 1 (Enf. Bur. 2009) (“*Omnibus NAL*”).

<sup>12</sup> See *id.* at 2303, para. 13.

<sup>13</sup> See Letter from Noemi Dolinsky, General Manager, USA Teleport, Inc., to Office of the Secretary, FCC (attn: Marcy Greene, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau) (Mar. 2, 2009) at 1 (“Response”) (claiming that USAT filed its CPNI compliance certification on September 10, 2008, rather than on or before March 1, 2008, because USAT was not aware of the filing requirement prior to receiving the Bureau's LOI).

filing should be excused without forfeiture. First, characterizing itself as a “small company” with “[n]either a Legal Department [n]or a regulatory compliance attorney,”<sup>14</sup> USAT claimed that until receiving the Bureau’s LOI, it was unaware of the certification filing requirement.<sup>15</sup> Second, USAT claimed “a long history of compliance” with CPNI regulations and argued its “alleged misconduct” was “uncharacteristic.”<sup>16</sup> Finally, USAT contended that forfeiture was unwarranted when USAT had filed the required certification “promptly” after receiving the LOI.<sup>17</sup> USAT’s arguments were considered and rejected in the *Forfeiture Order*.<sup>18</sup>

6. USAT’s Petition for Reconsideration largely repeats the arguments of its Response to the *Omnibus NAL*. Challenging the *Forfeiture Order*’s interpretation of “willfulness,” USAT again seeks to excuse its failure to file a timely CPNI compliance certification based on its ignorance of the filing requirement.<sup>19</sup> USAT also continues to emphasize its supposed history of protecting CPNI<sup>20</sup> and its position that forfeiture is unwarranted because USAT did eventually file the required certification.<sup>21</sup>

7. In addition, the Petition for Reconsideration raises three further issues: First, it contests our finding that USAT’s violation of the CPNI compliance certification filing requirement was “continuing” until corrected (and thus “repeated” within the meaning of section 503(b)(1)(B) of the Act).<sup>22</sup> Second, it seemingly argues that USAT was entitled to personal notice of the certification filing requirement.<sup>23</sup> Finally, it asserts—without evidence—that USAT is unable to pay the forfeiture amount because the recession has “devastat[ed]” the company’s finances.<sup>24</sup>

### III. DISCUSSION

8. Petitions for reconsideration are granted only in limited circumstances. Absent “a material error or omission in the underlying order,” or unless a petitioner raises “additional facts not known or not existing until after the petitioner’s last opportunity to present such matters,” reconsideration is not warranted.<sup>25</sup> “A petition for reconsideration that reiterates arguments . . . previously considered and rejected will be denied.”<sup>26</sup> Here, USAT has raised no new facts and relies on arguments—largely duplicative of USAT’s earlier Response—that reveal no error or omission in the *Forfeiture Order*. We therefore deny the Petition for Reconsideration, taking the opportunity below to reaffirm the findings and analysis of the *Forfeiture Order*, as well as to address USAT’s newly raised claim of financial hardship.

---

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *See id.* at 1–2.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.*

<sup>18</sup> *See* 2011 WL 742240, at \*2–3, paras. 6–9.

<sup>19</sup> *See* Petition for Reconsideration at 1–2, paras. 1, 3, 5–6.

<sup>20</sup> *See id.* at 3, para. 7.

<sup>21</sup> *See id.* at 1–2, paras. 1, 3.

<sup>22</sup> *See id.* at 3, para. 8.

<sup>23</sup> *See id.* at 1–4, paras. 2, 6, 8, Conclusion.

<sup>24</sup> *Id.* at 3–4, para. 9.

<sup>25</sup> *Christian Family Network, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18369, 18371, para. 8 (Enf. Bur. 2008); *accord Bible Broad. Network, Inc.*, File No. BRFT-20040730ADB, Memorandum Opinion and Order, DA 11-397, 2011 WL 704382, at \*2, para. 5 (Audio Div. rel. Mar. 1, 2011).

<sup>26</sup> *Christian Family Network*, 23 FCC Rcd at 18371, para. 8.

9. First, we reaffirm the *Forfeiture Order*'s interpretation of the term "willfulness";<sup>27</sup> our related holding that USAT committed a "willful" violation of section 64.2009(e) of the Commission's rules, the Commission's *EPIC CPNI Order*, and section 222 of the Act;<sup>28</sup> and our determination that, on the facts here, USAT's claimed ignorance of the *EPIC CPNI Order*'s amendment to section 64.2009(e) does not warrant reduction of the forfeiture.<sup>29</sup> USAT's contention that a "[w]illful violation" necessarily entails a party's "deliberate[]" disobedience of "know[n] . . . requirement[s]" reflects a fundamental misunderstanding of section 503(b)(1)(B) of the Act.<sup>30</sup> As the Commission has repeatedly explained when interpreting that provision, willfulness need not entail "'any intent to violate' the law";<sup>31</sup> a party's ignorance of a filing requirement does not negate the willfulness of its failure to file.<sup>32</sup> Here, the fact that USAT failed to file a timely CPNI compliance certification for 2007 is not (or at least not seriously) disputed.<sup>33</sup> Thus, USAT committed a willful violation of section 64.2009(e) of the Commission's rules, the *EPIC CPNI Order*, and (by extension) section 222 of the Act. Moreover, on the facts of this case, USAT's claimed ignorance of the certification filing requirement does not warrant mitigation of the forfeiture.<sup>34</sup> As we have repeatedly held, "administrative oversight," "lack of knowledge," or "erroneous beliefs" are not factors that warrant a forfeiture's reduction.<sup>35</sup>

<sup>27</sup> See 2011 WL 742240, at \*2, para. 4.

<sup>28</sup> See *id.* at \*1–2, paras. 1, 6.

<sup>29</sup> See *id.* at \*2, para. 6.

<sup>30</sup> Petition for Reconsideration at 1, para. 1.

<sup>31</sup> E.g., *Media Gen. Commc'ns Holdings, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6136, 6137–38, para. 6 (2010) (quoting 47 U.S.C. 312(f)(1)) (explaining that the legislative history of section 312(f)(1) makes clear the same "definition of willful applies to both Sections 312 and 503(b) of the Act"); *accord So. Cal. Broad. Co. Licensee, Radio Station KIEV (AM) Glendale, Cal.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991) ("*Southern California Broadcasting*").

<sup>32</sup> See, e.g., *Mr. Robert L. Lasso*, Letter, 25 FCC Rcd 9093, 9094 (Audio Div. 2010) (deeming the defendant's failure to file a license renewal application a "willful[] violat[ion]" of the Commission's rules, and emphasizing that the Commission has repeatedly held "violations resulting from inadvertent error or failure to become familiar with the FCC's requirements" to constitute "willful violations"); see also *PJB Commc'ns of Va., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088, para. 5 (1992) ("By their own admission, the authorizations of [the defendants] inadvertently lapsed [by their failure to timely file FCC Form 489]. The fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional. All that is necessary is that the licensee knew it was doing the act in question.").

<sup>33</sup> Although USAT now insists that it has "never admitted its failure to timely file the compliance certification," Petition for Reconsideration at 2, para. 6, that contention is merely a variation of USAT's argument that it cannot have "willfully" violated the CPNI compliance certification filing requirement if it was unaware that the requirement existed. USAT does not and cannot claim to have filed its 2007 CPNI compliance certification on or before March 1, 2008. USAT simply contends that, because it ultimately filed the certification upon learning the certification was overdue, its September 2008 filing should be treated as timely. See *id.* at 2–3, paras. 3, 6.

<sup>34</sup> As a threshold matter, USAT apparently does not seek reduction of the forfeiture amount, but only cancellation of the forfeiture. See *id.* at 4, para. 9 (arguing that USAT cannot pay any amount, let alone the full forfeiture, but indicating that the "point" of USAT's Response to the *Omnibus NAL* was not to seek a lower forfeiture but "to explain why the certification was sent after the due date"—i.e., why in USAT's theory of the case there was no violation); see also Response at 2 ("[F]orfeiture must not be imposed against USA Teleport, Inc."). Moreover, this is not a case in which forfeiture is imposed pursuant to a recent regulatory amendment that departed from prior policy or completely rewrote an existing rule. Prior to the *EPIC CPNI Order*, section 64.2009(e) of the Commission's rules already required telecommunications carriers such as USAT to maintain and make publicly available annual certifications of their CPNI compliance. See *EPIC CPNI Order*, 22 FCC Rcd at 6953–54, para. 52. Here, USAT has failed to show that it complied with the CPNI compliance certification requirement of the former version of section 64.2009(e). Indeed, USAT claims ignorance of that requirement, and further emphasizes that it does not have a "[l]egal [d]epartment" or employ "a regulatory compliance attorney" to keep abreast of the (continued....)

10. Second, USAT's continued assertions—unsupported by evidence—that it has a history of protecting CPNI do not warrant reconsideration of the *Forfeiture Order*. To begin with, USAT stops conspicuously short of affirmatively representing that prior to the amendment of section 64.2009(e) of the Commission's rules in the *EPIC CPNI Order*, USAT met its obligation to complete and independently maintain annual CPNI compliance certifications.<sup>36</sup> Indeed, USAT implicitly concedes that it did not meet that obligation, arguing it never knew such certifications were required.<sup>37</sup> In any event, USAT has already received an opportunity to present evidence of historical compliance but has failed to do so.<sup>38</sup>

11. Third, because “corrective action taken to come into compliance with Commission rules or policy is expected,” USAT's eventual filing of a 2007 CPNI compliance certification, upon receiving the LOI, “does not nullify or mitigate” USAT's violation or the forfeiture we have imposed.<sup>39</sup>

12. Fourth, we reaffirm our determination that USAT's failure to file its 2007 CPNI compliance certification—which had a continuing harmful impact on “the Commission's ability to effectively monitor and respond to violations of consumer[] privacy” and ensure the necessary industry response—was a “continuing violation until cured.”<sup>40</sup> That determination is entirely consistent with Bureau precedent,<sup>41</sup>

---

(...continued from previous page)

Commission's rules. Response at 2. Under the circumstances, we do not confront a party that has historically monitored and complied with the rules but has been caught unaware by a recent and major departure from prior policy. In addition, as the record reflects, the *Omnibus NAL*'s proposal of a \$20,000 forfeiture—rather than the \$100,000 forfeiture proposed in earlier CPNI enforcement proceedings—already accounted for the fact that 2008 was the first year in which CPNI compliance certifications were required to be filed with the Commission. See 24 FCC Rcd at 2302, paras. 7–8.

<sup>35</sup> *STI Prepaid, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17836, 17845, para. 20 (Enf. Bur. 2010) (citing *Southern California Broadcasting*, 6 FCC Rcd at 4387).

<sup>36</sup> See Petition for Reconsideration at 3, para. 7 (“The fact that the Commission never [before issuing the LOI] asked USA Teleport, Inc.[.] for anything related to CPNI compliance does not mean that USA Teleport, Inc.[.] did not comply with [the CPNI regulations]. USA Teleport, Inc.[.] has always protected customer information . . . .” (emphasis added)). USAT's failure here, or at any earlier stage of this proceeding, either to make an affirmative representation that it historically maintained CPNI compliance certifications or to produce evidence of such certifications is particularly notable in light of the *Omnibus NAL*'s express invitation for carriers to “present evidence . . . that [they have] maintained a history of overall compliance.” 24 FCC Rcd at 2303, para. 10. Indeed, USAT appears to concede that it did not maintain such certifications, arguing that USAT never knew it was required to do so. See Petition for Reconsideration at 3, para. 7 (“If there was a requirement prior to the adoption of the annual CPNI certification filing requirement that required an officer of the company to certify annually that the company was in compliance with the Commission[']s rules, USA Teleport, Inc.[.] was never notified about it, but this fact does not mean that USA Teleport, Inc.[.] was not doing anything to protect CPNI.”).

<sup>37</sup> See *id.*

<sup>38</sup> See *Omnibus NAL*, 24 FCC Rcd at 2303, para. 10.

<sup>39</sup> *Callais Cablevision, Inc.*, Forfeiture Order, 17 FCC Rcd 22626, 22629 para. 16 (2002) (quoting *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994)); see also *Global Teldata II, LLC*, 22 FCC Rcd 8710, 8719, para. 22 (2007) (“Post-investigation corrective measures are not sufficient to avoid enforcement action.”).

<sup>40</sup> *Forfeiture Order*, 2011 WL 742240, at \*3, para. 8.

<sup>41</sup> See e.g., *Champaign Tel. Co. D/B/A CT Commc'ns, Inc.*, Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17814, 17818–19, para. 9 (Spec. Enf. Div. 2010) (construing a failure to file the hearing aid compatibility status report required under section 20.19(i)(1) of the Commission's rules as “a continuing violation that continues until . . . cured”); *STI Prepaid*, 25 FCC Rcd at 17845, para. 20 (same); *Lightyear Network Solutions, LLC*, Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16212, 16217, para. 12 (Spec. Enf. Div. 2010) (same); *Alpheus Commc'ns, LP*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8993, 8998, para. 12 & n.40 (Enf. Bur. 2010) (construing the failure to file timely network-outage reports as a continuing violation); *Am. Samoa* (continued....)

and indeed with numerous decisions of the Commission itself.<sup>42</sup> By contrast, we know of no precedent (and USAT has cited none) to support USAT's newly raised theory that "a continuing violation means" a party's failure to "comply with . . . requirements" after having "been advised [of them] numerous times."<sup>43</sup> Because USAT's failure to file its 2007 CPNI compliance certification was a continuing violation until cured, it was also a "repeated" violation within the meaning of section 503(b)(1)(B) of the Act.<sup>44</sup> We affirm the *Forfeiture Order* on that basis as well as on the independent basis that the violation was willful.<sup>45</sup>

13. Fifth, to the extent USAT argues it was entitled to personal notice of the *EPIC CPNI Order*'s amendment to section 64.2009(e) of the Commission's rules,<sup>46</sup> that contention is utterly without merit. The amendment requiring carriers to file CPNI compliance certifications with the Commission was promulgated pursuant to the Commission's general rulemaking authority.<sup>47</sup> As such, proper and timely publication in the Federal Register—which USAT does not dispute occurred here—furnished sufficient notice under section 553(b) of the Administrative Procedure Act.<sup>48</sup>

14. Sixth, and finally, we decline to consider USAT's newly raised and unsupported claim of financial hardship. As the company itself admits, USAT elected not to argue financial hardship in its Response to the *Omnibus NAL*,<sup>49</sup> and we have no basis to consider such a newly raised claim here.<sup>50</sup>

(...continued from previous page)

*Telecomms. Auth.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432, 16437, para. 11 (Spec. Enf. Div. 2008) (construing the failure to file a hearing aid compatibility status report as a continuing violation), *response pending*.

<sup>42</sup> See *ADMA Telecom, Inc.*, File No. EB-06-IH-2110, Forfeiture Order, FCC 11-42, at 4, para. 8 (rel. Mar. 10, 2010) ("ADMA's failure to register was a continuing violation that began on the day ADMA started providing interstate telecommunications service without having registered in accordance with section 64.1195(a) and continued until it filed its first Form 499 on August 1, 2006."); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7244, para. 30 (2008) (construing the carrier's failures to file Telecommunications Reporting Worksheets as "continuing violations for which the statute of limitations for forfeiture does not begin to run until the violation is cured"); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138, para. 29 (2008) (same); *VCI Co.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, para. 20 (2007) (same); *Global Teldata II*, 22 FCC Rcd at 8717, para. 17 (construing a telecommunications reseller's failure to register with the Commission as a "continuing" violation that "ended only when the company finally registered"); see also *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 n.72 (2002) (holding that, but for the Bureau's decision to act pursuant its delegated authority rather than refer the matter to the Commission, the defendant carrier's failure to file an affidavit verifying the accuracy of its response to the Bureau's LOI would have been subject to "a forfeiture . . . of up to \$120,000 per day, up to a maximum of \$1.2 million for the more than 10 days for which [the carrier's] violation continued" (emphasis added)).

<sup>43</sup> Petition for Reconsideration at 3, para. 8.

<sup>44</sup> See *Global Teldata II*, 22 FCC Rcd at 8717, paras. 16–17 (explaining that "Congress clearly intended" for the term "repeated" in sections 312 and 503 of the Act to "include a continuous violation lasting for more than one day," and holding the defendant's "failure to register was continuing and, therefore, 'repeated'").

<sup>45</sup> See 47 U.S.C. § 503(b)(1)(B) (authorizing forfeiture penalties for parties who "willfully or repeatedly" violate the Act or the Commission's rules (emphasis added)).

<sup>46</sup> See Petition for Reconsideration at 1–4, paras. 2, 6, 8, Conclusion.

<sup>47</sup> See *EPIC CPNI Order*, 22 FCC Rcd at 6933, para. 11 (summarizing the history of the rulemaking).

<sup>48</sup> 5 U.S.C. § 553(b); see *United States v. Daniels*, 418 F. Supp. 1074, 1077 (D.S.D. 1976).

<sup>49</sup> See Petition for Reconsideration at 3–4, para. 9; see also generally Response (attempting to justify USAT's failure to file a timely CPNI compliance certification but nowhere asserting inability to pay).

Moreover, although USAT now claims that it “does not have any problem to show the Commission the devastating financial situation the company has been through for the last years,”<sup>51</sup> USAT has offered no evidence of financial hardship—let alone evidence of the kind we have expressly explained is required.<sup>52</sup>

15. “[T]he Commission enjoys ‘broad discretion in determining whether to impose sanctions in a given case.’”<sup>53</sup> For all of the reasons explained above, the forfeiture imposed against USAT is well within our discretion. There are no grounds for reconsideration of the *Forfeiture Order*.

#### IV. ORDERING CLAUSES

16. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 405 of the Act and section 1.106 of the Commission’s rules, USAT’s Petition for Reconsideration **IS DENIED**.

17. It is **FURTHER ORDERED** that the *Forfeiture Order* **IS AFFIRMED** and that pursuant to section 503(b) of the Act, USAT **SHALL FORFEIT** to the U.S. Government the sum of \$20,000.

18. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) days of the release of this Memorandum Opinion & Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account No. and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C 2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account Number in block number 24A. USAT will also send electronic notification on the date said payment is made to johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to Chief Financial Officer – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, DC 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or e-mail ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

---

(...continued from previous page)

<sup>50</sup> This is not an instance, for example, in which the petitioner’s financial hardship occurred after or was otherwise unknown at the petitioner’s last opportunity to present such matters, or in which consideration of the petitioner’s financial hardship is necessary to serve the public interest. *See* 47 C.F.R. § 1.106(b), (c).

<sup>51</sup> Petition for Reconsideration at 4, para. 9.

<sup>52</sup> *See Omnibus NAL*, 24 FCC Rcd at 2304, para. 16 (“The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.”). Without such evidence, even if we were otherwise inclined to consider USAT’s claim of financial hardship, we would have no basis for determining the proper extent of any cancellation or reduction.

<sup>53</sup> *Bible Broadcasting*, 2011 WL 704382, at \*3, para. 11 (quoting *Family Ministries, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1419 (2003)).

19. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested and First Class Mail to USAT at 127th NE 167th Street, Unit B, North Miami Beach, FL 33162.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau